IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

RSA.No. 281 of 2007()

AS.176/2005 of ADDL.DISTRICT COURT, THRISSUR
OS.1514/2003 of PRL.MUNSIFF COURT,THRISSUR

.....

: APPELLANT(APPELLANT/PLAINTIFF)

DIX JACOB, S/O JACOB VAZHAPPILLY,
VAZHAPPILLY HOUSE, KIZHAKKUMPATUKARA DESOM,
THRISSUR.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: (RESPONDENTS/DEFENDANTS)

---

1. THE GOVERNMENT OF KERALA, REP. BY
DISTRICT COLLECTOR, THRISSUR.

2. THE TAHSILDAR, ASSESSING AUTHORITY,
THRISSUR.

3. THE VILLAGE OFFICER, CHEMBUKAVU VILLAGE
OFFICE, CHEMBUKAVU.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 22/03/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

Order on I.A.No.622/07 in R.S.A.No.281/07

22.3.07 Dismissed Sd/- M. Sasidharan Nambiar,
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

==========

R.S.A. NO.281 OF 2007

==========

Dated this the 22nd day of March, 2007

JUDGMENT

Plaintiff in O.S.No.1514/03 on the file of Munsiff Court, Thrissur is the appellant. Defendants are respondents. The appellant filed the suit seeking a decree for a declaration that defendants are not entitled to proceed against the movable properties in the building TC 19-540(V/A) and restraining defendants from realising the building tax from the appellant or his properties. The case of the appellant was that the building against which assessment proceedings were initiated under Kerala Building Tax Act, does not belong to the appellant but to his father and when Ext.A1 notice was served directing him to produce approved plan and returns, he sent Ext.A2 reply stating that he is not the owner of the building and his father is the owner and therefore the proceedings has to be initiated against his father and he is not in a

position to produce the approved plan and return and still Ext.A3 order was passed asssessing a building tax of Rs.51,600/- as against the appellant. Appellant contended that as he is not the owner or the assessee, he is not liable to pay the building tax and respondents are not entitled to proceed against him or his movable or immovable properties for realisation of the building tax. Respondents filed a written statement contending that the suit is barred under section 27 of Kerala Building Tax Act and appellant is not entitled to the decree sought for. Learned Munsiff on the evidence of PW1 and Ext.A1 to A9, dismissed the suit holding that the suit is barred under section 27 of the Building Tax Act. Appellant challenged the decree and judgment before Additional District Court, Thrissur in A.S.176/05. Learned Additional District Judge on reappreciation of evidence confirmed the decision of the learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

2. Learned counsel appearing for the appellant was heard.

3. The argument of learned counsel appearing for appellant was that appellant is neither the owner nor the assessee who is liable to pay building tax and his case is that he cannot be assessed for the building tax under the provisions of Building Tax Act as the building does not belong to him as he is not an owner as defined under the Act, and therefore he cannot be proceeded for realisation of the building tax and Section 27 of the Kerala Building Tax Act, 1975 does not apply and courts below should have granted the decree sought for.

4. Section 27 of Kerala Building Tax Act, 1975 reads:-

> "Bar of suits etc. in courts- No suit shall be brought in any civil court to set aside or modify any assessment

made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any authority or officer for anything in good faith done or intended to be done under this Act."

Under the said section, no suit could be instituted before a civil court either to set aside or modify any assessment made under the Act. Section 9 of the Act deals with assessment. Under sub section (1) of Section 9, if the assessing authority is satisfied that a return made by an owner under section 7 or section 8 is correct and complete, it shall assess the amount payable by him as building tax on the basis of the return. Under sub section (2), if the assessing authority is not so satisfied, it shall serve a notice on the assessee either to attend in person at its office on a date

to be specified in the notice or to produce or cause to be produced on that date any evidence on which the assessee may rely in support of his return. Under sub section (3) the assessing authority, after hearing such evidence as the assessee may produce and such other evidence as it may require on any specified point and after conducting such inquiries or inspection as it may consider necessary, shall by order in writing, assess the amount payable by him as building tax.

5. Ext.A1 notice was issued as provided under sub section (2) of Section 9. Ext.A3 order was passed as provided under sub section (3) assessing the amount payable by the appellant as building tax. Sub clause (c) of Section 2 of the Act defines an assessee as follows:-

> "assessee" means a person by whom building tax or any other sum of money is payable under this Act and includes every person

> in respect of whom any proceeding under this Act has been taken for the assessment of the building tax payable by him.

As per the definition, a person by whom building tax or any other sum of money is payable under the Act is an assessee. The argument of learned counsel appearing for appellant was that building tax under the Act is payable only by the owner and as defined under clause (i) "owner" could only be a person who for the time being is receiving or is entitled to receive rent of any building, whether on his own account or on account of anybody else and therefore appellant cannot be an assessee. The argument could have been accepted if the definition of assessee is limited to a person by whom building tax is payable. But as per the definition, an assessee includes every person in respect of whom any proceeding under this Act has

been taken for the assessment of the building tax payable by him. When a notice, as contemplated under sub section (2) of Section 9 was issued to the appellant proposing to assess the building tax payable by him and subsequent to that notice under sub section (3), an order was passed assessing the building tax payable by the appellant, it need no further explanation to hold that appellant is an assessee as defined under the Act, as proceedings under the Act has been taken for the assessment of the building tax payable by him.

6. Section 11 provides that an assessee objecting to the amount of building tax assessed under section 9 or denying his liability to be assessed under the Act, or objecting to any order of the assessing authority under the Act may appeal to the Appellate Authority against the assessment or against such order. Hence it is clear from sub section (1) of Section 11, that any person who is assessed to building tax under section 9(3) and

who is denying his liability to be assessed under the Act or who is objecting to any order of the assessing authority is entitled to file an appeal against the order of assessment. If that be so, under section 27, the suit is definitely barred. No substantial question of law arises for consideration in the appeal. The appeal is dismissed.

Learned counsel appearing for appellant then submitted that the period for preferring an appeal has expired and appellant may be granted an opportunity to file an appeal as provided under section 11. Appellant is entitled to file an appeal as provided under the Act. The question whether delay could be condoned or not is to be decided by the authority under the Act.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

S.A.NO.527 /1993

JUDGMENT

23rd March,2007